Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands	)	WT Docket No. 03-66 RM-10586
	)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures	)	WT Docket No. 03-67
	)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service to Engage in Fixed Two-Way Transmissions	)	MM Docket No. 97-217
	)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico	)	WT Docket No. 02-68 RM-9718
	)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets	)	WT Docket No. 00-230

REPLY COMMENTS OF SPRINT CORPORATION

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February 8, 2005

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Executive Summary

Sprint makes the following points in these reply comments:

1. The vast majority of comments make clear that the Commission should adopt substantial service as the applicable performance standard for the BRS/EBS band. Specifically, the Commission should apply the substantial service performance standard and "safe harbors" that have been adopted under Part 27 of the Commission's rules to the BRS/EBS band, along with the safe harbors recently adopted by the Commission for rural areas. The Commission also should confirm the availability of case-by-case showings of substantial service for service deployments that are not covered by a safe harbor.

The Commission should not mandate coverage to two-thirds of the geographic service area. Such a requirement is inconsistent with flexible deployments. The Commission also should not require substantial service showings sooner than five years from the post-transition notification deadline, to ensure sufficient time for BRS/EBS licensees to reconfigure the band and deploy on a wide-scale basis. The Commission should evaluate substantial service on a system-wide basis rather than a per-channel group basis, as there are a number of reasons why a given channel may not be used for immediate transmission purposes yet is integral to the overall system and service.

2. The Commission should auction the EBS "white space" one year after the effective date of these rules so that this spectrum gets into use quickly while still providing enough time for EBS entities to prepare and for BRS authorization holders to make one "last chance" application for specific channels under the so-called "wireless cable exception" rules. All BRS/EBS spectrum to be auctioned should be auctioned along BTA lines, on a channel-group by channel-group basis to mirror actual use and maximize utility. The Commission's Designated Entity provisions are inappropriate for EBS entities and should not be applied to EBS spectrum auctions. EBS entities should not be restricted from acquiring commercial funding for their EBS auction efforts.

3. Entities electing to self-transition should complete that process within eight months of the deadline for filing Initiation Plans. Licensees should be afforded the opportunity to file a waiver to extend such eight-month limit as required by unique circumstances.

4. BRS authorization holders should be given one last chance to file applications for EBS white space under the so-called "wireless cable exception" to the EBS eligibility restrictions – after which the exception should be eliminated.

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REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") submits these reply comments in response to the Commission's Further Notice of Proposed Rule Making regarding further changes to the recently revamped Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") service rules and spectrum assignments.[1]

[1] *Amendment of Parts 1,21,73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz bands,* Report and Order and Further Notice of Proposed Rulemaking, FCC Rcd 14165 (2004) ("*BRS R&O*" and "*FNPRM*").

I. INTRODUCTION

Sprint supports the Commission's efforts to overhaul the BRS/EBS spectrum and service rules. The record in this proceeding demonstrates substantial consistency on many of the issues raised in the *FNPRM*. The majority of commenters, for example, favor substantial service performance requirements and a self-transition option, and all commenters agree that the rules ultimately adopted by the Commission should emphasize flexibility.

II. THE RECORD ENDORSES THE ADOPTION OF A SUBSTANTIAL SERVICE PERFORMANCE STANDARD

There is broad support for the adoption of a substantial service performance standard that provides for case-by-case showings of substantial service, coupled with "safe harbors" designed to provide licensees with some measure of certainty in the renewal process.[2] As Sprint and most others pointed out, the Commission's prior conclusions that a substantial service standard provides the greatest degree of flexibility to both develop and deploy new services apply with equal force to the new BRS/EBS regulatory regime, the centerpiece of which is maximizing flexibility for licensees.[3] As commenters further pointed out, the Commission should apply the existing substantial

[2] *See*, *e.g.*, Comments of Sprint at 5-10; Comments of the Wireless Communications Association International, Inc. ("WCA") at 2-17; Joint Comments of the Catholic Television Network and the National ITFS Association ("NIA/CTN") at 7-10; Comments of BellSouth Corporation, BellSouth Wireless Cable, Inc., and South Florida Television, Inc. ("BellSouth") at 5-15; Comments of Nextel Communications ("Nextel") at 2-5; Comments of Grand Wireless Company, Inc. ("Grand Wireless") at 1; Comments of Wireless Direct Broadcast System ("WDBS") at 2; Comments of Digital Broadcast Corporation ("DBC") at 2; Comments of Cheboygan-Otsego-Presque Isle Educational Service District and PACE Telecommunications Consortium at 2; Comments of C&W Enterprises, Inc. ("C&W") at 2; Comments of SpeedNet, L.L.C. at 2. Unless indicated otherwise, all comments cited throughout this document were filed in WT Docket No. 03-66 on Jan. 10, 2005.

[3] *See*, *e.g.*, Comments of Sprint at 5-6; Comments of WCA at 3-4; Comments of BellSouth at 5; Comments of Nextel at 2.

service definition and safe harbors already adopted for Part 27, which should be on a system-wide rather than channel-by-channel basis, to account for the historic development of the BRS/EBS band, and ensure that case-by-case evaluations are available for service deployments that are not covered by a safe harbor.[4] Further, Sprint supports the specific safe harbors for EBS licensees proposed by NIA/CTN.[5] With respect to the issue of when substantial service showings should be required, it is noteworthy that most of the commenters addressing that issue posited a date of five years after the applicable deadline for filing the post-transition notification.[6]

In contrast to the balanced approach posited by Sprint and others, Clearwire Corporation ("Clearwire") proposes a substantial service standard that is inconsistent with both Commission goals and the current state of the BRS/EBS band. The Clearwire proposal would require that licensees make a substantial service showing on a per-channel group basis to two-thirds of the population in the geographic service area.[7] Clearwire further proposes that such showing be required within five years of the "effective date of the new rules."[8] Clearwire's approach is incompatible with the Commission's flexible use and market-oriented goals for BRS/EBS band.

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[4] *See*, *e.g.*, Comments of Sprint at 7-9; Comments of WCA at 8-14; Comments of BellSouth at 5-8.

[5] *See* Comments of NIA/CTN at 8-9.

[6] *See* Comments of Sprint at 9-10; Comments of WCA at 14-17; Comments of BellSouth at 12-13; Comments of Nextel at 3-4; Comments of NIA/CTN at 8.

[7] Comments of Clearwire at 18.

[8] *Id.*

A. Mandating Coverage To Two-Thirds Of The Population In The Geographic Service Area Is Inflexible And Should Be Rejected.

Requiring coverage of two-thirds of the population in the geographic service area does not reflect the flexibility of the existing Part 27 construction benchmarks proposed by Sprint and others. The BRS/EBS band reconfiguration will involve new, undefined services and likely will involve new technologies and equipment – including equipment that has not yet been developed. As WDBS and other commenters who opposed the stringent operation and construction requirements of the type proposed by Clearwire observed, "different markets will require different build-out strategies and timeframes and such [stringent] requirements would merely hinder business planning."[9] Given the open-ended, flexible use and market-driven aspects of future BRS/EBS service deployments, and the fact that the Commission does not know what kinds of services will ultimately be deployed in the reconfigured BRS/EBS band, it would be inefficient and potentially counter-productive for the Commission to apply the two-thirds coverage requirement.[10] Requiring BRS/EBS licensees to meet a different and more rigorous performance standard than other wireless services operating under Part 27 also is

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[9] Comments of WDBS at 2. *See also* Comments of DBC at 2; Comments of C&W at 2; Comments of Cheboygan-Otsego-Presque Isle Educational Service District and PACE Telecommunications Consortium at 2; Comments of SpeedNet, L.L.C. at 2.

[10] As the Commission observed in applying a 10-year substantial service requirement for Local Multipoint Distribution Service ("LMDS"): ". . . imposing strict construction requirements that would apply over the license term would be neither practical nor desirable as a means of meeting the objectives established in Section 309(j) of the Act regarding warehousing and rapid deployment. Without knowing the specific type of service or services to be provided, it would be difficult to devise specific construction benchmarks." *Rulemaking To Amend Parts 1, 2, 21, and 25 Of the Commission's Rules to Redesignate The 27.5-29.5 GHz Frequency Band*, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545, 12659 ¶ 267 (1997) ("*LMDS 2nd R&O*"). *See also Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, Report and Order, 12 FCC Rcd 10785, 10843 ¶ 112 (1997).

inconsistent with the Commission's principle of pursuing regulatory parity when appropriate.[11]

Clearwire's attempt to justify its two-thirds coverage requirement proposal on the basis that such requirement was achievable under the old BRS rules has no relevance to the new BRS/EBS regime. Although BRS BTA authorization holders were required to meet a two-thirds population coverage standard under the old BRS rules, that requirement was developed for one-way (not mobile, two-way) video services from high-power, high-site transmission facilities having a line-of-site to their receive sites.[12] Achieving coverage over many miles by a single base station was a relatively straightforward matter. In contrast, the new BRS/EBS regulatory framework is intended to facilitate open-ended, flexible use services, including low-power cellularized, non line-of-site services. Moreover, mobile services were not even generally authorized until 2001[13], and while the two-thirds coverage standard remained in place for mobile two-way services in the band, as the Commission acknowledged in the underlying NPRM to this proceeding,

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[11] In fact, one of the Commission's principal goals in overhauling the BRS/EBS bandplan and service rules was to "[c]reate regulatory policies that treat similar services similarly." *Amendment of Parts 1,21,73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 18 FCC Rcd 6722, 6742 ¶ 41 (2003) ("*BRS NPRM*").

[12] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 10 FCC Rcd 9589, 9613 ¶ 43 (1995). Moreover, unlike Clearwire's proposal to cancel licenses for which substantial service has not been met, failure to meet the two-thirds coverage standard under the old rules only resulted in a loss of the area wherein that the benchmark was not met.

[13] *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, First Report and Order and Memorandum Opinion and Order, 16 FCC Rcd 17222 (2001). For that matter, two-way services were not generally authorized until September 1998. *See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order, 13 FCC Rcd 19112 (1998).

"[that] existing regulatory structure [] limited the ability of operators to deploy two-way services and made it nearly impossible to provide mobile service."[14]

B. Substantial Service Showings Should Not Be Required Until Five Years After The Applicable Deadline For Filing Post-Transition Notifications.

Clearwire's proposal to require substantial service showings five years from the effective date of the new rules is unreasonable. It is clear that transitioning the entire country to the new BRS/EBS bandplan will take time, regardless of the geographic basis for such process. As Clearwire itself observed, BRS and EBS licensees "face unique challenges including the impending three-year transition to the new band plan."[15] In recognition of the unique challenges facing BRS and EBS licensees, Sprint, WCA, leading members of the educational community and others proposed that BRS and EBS licensees should generally be subject to substantial service review at the time of license renewals, but that the initial substantial service showings should not be required for any BRS or EBS licensees until five years after the applicable deadline for filing the post-transition notification.[16]

As WCA pointed out in its comments, the five-year time frame is one half the ten-year time frame generally afforded under Part 27, and proportionately less than that faced by other services where special circumstances existed that might delay a licensee's

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[14] *BRS NPRM* at 6725 n.3.

[15] Comments of Clearwire at 20.

[16] BRS and EBS licensees having renewal dates that occur prior to that date should be granted renewals, provided that they demonstrate substantial service five years after the applicable deadline for filing the post-transition notification.

initiation of service.[17] This is not a situation in which licensees can start constructing networks on "Day 1" of the new regime – it is a situation requiring licensees to reconstruct and reconfigure entire geographic licensed areas through predetermined and carefully laid-out procedures.[18] Moreover, there will likely be a high degree of variance in the time and manpower factors required to transition one market from another. Under these circumstances, the five-year clock should be started from the date of transition completion – when the spectrum is "clean" and ready for deployment. Adopting shorter time-frames does not necessarily result in the most efficient use of the spectrum.[19] For example, short time frames may increase the possibility that some licensees may feel compelled to erect or maintain legacy facilities, meeting the letter but not the spirit of the new BRS/EBS regulatory regime.[20]

In addition, while shorter time-frames may suit certain existing proprietary technologies and services, that may not suit all licensees' visions for the BRS/EBS band, and would make it harder for operators and other vendors to develop new standardized equipment and services. For example, the WiMax mobile wireless standard (IEEE

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[17] *See* Comments of WCA at 16. Further, this time-frame is shorter than that proposed by other commenters. Hispanic Information and Telecommunications Network ("HITN"), for example, proposes a substantial service deadline of 2015. *See* Comments of HITN at 3.

[18] Given that the Commission has not established the relocation rules that will apply to BRS Channels 1 and 2 and the resulting uncertainty licensees face in transitioning those operations, it seems reasonable that BRS 1 and 2 licenses should be given more time to make their substantial service showing than the rest of the BRS/EBS licenses.

[19] In fact, the Commission has concluded that *minimum* benchmarks can promote efficiency. As the Commission observed in applying a 10-year substantial service requirement to LMDS, "we believe that minimum construction requirements can promote efficient use of the spectrum, encourage the provision of service to rural, remote, and insular areas, and prevent the warehousing of spectrum." *LMDS 2nd R&O* at 12659 ¶ 266.

[20] For largely these same reasons, the Commission should reject DBC's proposal to cancel Middle Band Segment licenses not in operation by January 10, 2010. *See* Comments of DBC at 2.

802.16e) has not been finalized, and sufficient time will be required to complete the standard, and provide vendors lead-time to integrate new chipsets into devices compatible with the BRS/EBS band (such as PDAs, laptops, MP3 players, DVD players and other handheld/portable computing devices). In turn, operators will also need time to deploy services based on these developments.

C. Per-Channel Group Substantial Service Showings Are Inflexible And Should Be Rejected.

As Sprint and others pointed out, operators are likely to utilize BRS and EBS channels from various sources within a given market to construct their systems and, for example, may have to break up channel groups to and/or utilize some licensed spectrum as guard bands. Having the flexibility to tailor substantial service showings to particular services, which is the hallmark of the substantial service standard, is critical to BRS and EBS operations. By contrast, evaluating performance compliance upon a per-channel group (or per-channel) basis, as Clearwire proposes, will not always accurately portray the utility of that spectrum to the service that is being offered to consumers. As WCA points out, for example:

> BRS/EBS channels may be devoted by the system operator to guardband – while not "used" in the classic sense, guardbands will have to be a critical component of system design if consumers are to reap the benefits of the Commission's decision to permit the use of both time division duplex ("TDD") and frequency division duplex ("FDD") technologies in the 2.5 GHz band.[21]

[21] Comments of WCA at 11. *See also* Comments of BellSouth at 14-15; Comments of Nextel at 5 ("Focusing on the level of service provided by any individual license or on an individual channel would ignore the random, multi-source method by which BRS licensees must serve the public. Measuring substantial service on a per call sign or per channel basis may also result in a finding that a licensee has not diligently deployed service when, in fact, a large number of consumers in a given geographic area have access to the service that the licensee offers.").

Indeed, Clearwire itself points to the Commission's conclusion in the 800 MHz proceeding that one of the primary benefits of the substantial service standard is that it "'affords licensees the flexibility to develop and provide new services, rather than focusing their resources on meeting population coverage criteria and channel usage requirements'."[22] In fact, the Commission expressly rejected proposals to apply a "per-channel" construction requirement in the 800 MHz band, concluding that "licensees should have the flexibility to respond to market-based demands for service and that adopting a 'per-channel' construction requirement would greatly interfere with licensees' ability to respond to such demands."[23] The Commission also rejected the notion that a per-channel or 100 percent channel build-out requirement was needed to prevent inefficient spectrum use and warehousing, concluding that:

> [W]e believe that the competitive bidding process effectively allocates spectrum to the entity that values it most and results in service being provided to the public expeditiously. [Licensees] would incur an opportunity cost if spectrum is not used as efficiently as possible and thus would have incentives to promote spectrum efficiency.[24]

Licensees and lessees of BRS/EBS spectrum, who have paid monies to acquire or lease spectrum, have incentives to deploy service, and ask only that the Commission adopt a performance standard that will allow rational deployment of services.

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[22] Comments of Clearwire at n.25 (*quoting Amendment of Part 90 of the Commission's Rules to Facilitate Future Development* of SMR Systems in the 800 MHz Frequency Band, Memorandum Opinion and Order and Order on Reconsideration, 14 FCC Rcd 17556, 17568 ¶ 16 (1999) ("*800 MHz MO&O*").

[23] *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, Second Report and Order, 12 FCC Rcd 19079, 19094-95 ¶ 34 (1997).

[24] *800 MHz MO&O* at 17566-67 ¶ 15.

Assessing compliance on a per-channel group basis would limit operators' flexibility to deploy services and could force them to build out basic, inefficient services that are not the most technologically advanced and are unresponsive to market demand just for the sake of ensuring that their licenses are not canceled. Assessing compliance on a per-channel group basis also could result in a flood of case-by-case showing requests to the Commission – by licensees seeking to demonstrate how a given channel group is utilized within a system – which would drain administrative resources unnecessarily.[25]

III. AUCTION ISSUES

A. The Commission Should Delay Auctioning EBS White Space Until One Year After The Effective Date Of The Second Report And Order In This Docket.

In its comments, Sprint proposed that EBS white space should not be auctioned until after self-transitions had been completed.[26] Sprint was concerned that auctioning this spectrum before transition periods had expired could complicate the overall transition process. Upon further consideration of the this issue, Sprint believes that it is unnecessary to put off auctioning the EBS white space until after transitions have occurred. The complications to the transition process with which Sprint was concerned can be addressed by adopting the proposal advocated by WCA and ensuring that EBS

[25] Sprint also objects to Clearwire's proposal that the substantial service determination assess whether the service is a "reliable broadband service" as being contrary to Commission policies. *See* Comments of Clearwire at 18. Requiring the Commission to define "reliable" broadband service would entangle the Commission in technical and operational aspects of operators' systems. The Commission has long avoided micro-regulating technical aspects of operators' systems and there is no reason to start here. Determinations of whether a service is reliable should be left to licensees and the marketplace to decide, along with industry standardization activities.

[26] *See* Comments of Sprint at 3-4. Sprint noted that if the Commission elected to auction EBS white space before self-transitions, it must make clear that the entities acquiring such spectrum in the auction will not be entitled either to replacement downconverters or migration of programming as part of any future transition or self-transition process.

white space license winners are not entitled to new downconverters or other facilities or any form of program migration to the Middle Band Segment ("MBS").

Accordingly, Sprint now proposes that the Commission auction the EBS white space no sooner than one year from the effective date of the *Second Report and Order* adopting these rules. Sprint is sensitive to NIA/CTN's concerns that EBS licensees will be occupied with harmonizing their educational service plans with the new bandplan and service rules.[27] However, Sprint believes that the proposed twelve-month delay should provide EBS entities with sufficient time to determine whether they desire to participate in the EBS white space auction and complete preparations that might be required to effectively participate in the auction. Further, such time frame will accommodate BRS BTA authorization holders by providing them with one last chance to file for vacant EBS spectrum pursuant to the so-called "wireless cable exception" (as discussed below).

B. The Commission Should Auction BRS And EBS Spectrum Along BTA Lines, On A Channel Group Basis.

There appears to be strong support among commenters for auctioning the available BRS/EBS spectrum according to BTA geographic license sizes.[28] BRS spectrum has been geographically licensed as BTAs for many years now, the FCC's licensing databases are set up to process BRS license information based upon BTAs, and interference and other interoperating relationships have been established along BTA lines.

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[27] *See* Comments of NIA/CTN at 11.

[28] *See*, *e.g.*, Comments of Sprint at 4; Comments of WCA at 24-25; Comments of Nextel at 8-9; Comments of NIA/CTN at 11; Comments of the National Telecommunications Cooperative Association ("NCTA") at 3; Comments of WDBS at 4; Comments of C&W at 4; Comments of SpeedNet, L.L.C. at 4.

Sprint disagrees with HITN's proposal to auction EBS spectrum along Major Economic Areas ("MEA") lines.[29] Auctioning licenses on this basis would complicate their incorporation into the existing BRS/EBS licensing framework. HITN contends that auctioning EBS spectrum in large geographic blocks will ensure prompt service to rural areas and will be more efficient. Adoption of the rural area safe harbors recently adopted by the Commission in the Rural Service docket (WT Docket No. 03-381), as proposed by Sprint and other commenters, however, seems like a more efficient means to facilitate rural area deployments.[30] Moreover, Sprint agrees with NIA/CTN that "auctioning new EBS licenses for geographic areas as large as MEAs makes no sense given the local nature of educational use of EBS, [and] the number of potential EBS licensees that might seek to extend their service areas within any given MEA . . . ."[31] As WCA observed, mismatching license sizes with anticipated demand can be inefficient:

> By forcing auction participants to bid for geographic areas where they do not intend to provide service, the Commission increases the likelihood that the winning bidder in an auction is not the party with the highest valued use for a given geographic area, thus undermining the integrity of the auction process as a means of getting spectrum into the hands of those most likely to use it.[32]

In auctioning BRS/EBS spectrum on a BTA basis, Sprint agrees with WCA and others that the Commission should auction the spectrum in each BTA on a channel group basis, but with the Lower Band Segment ("LBS")/Upper Band Segment ("UBS")

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[29] *See* Comments of HITN at 5.

[30] *See* Comments of Sprint at 8. *See also* Comments of BellSouth at 8-10; Comments of WCA at 9.

[31] Comments of NIA/CTN at 12.

[32] Comments of WCA at 24-25.

channels auctioned separately from the MBS channel.[33] Thus, for example, the H Group channels in a given BTA would be auctioned as a group, A1, A2 and A3 would be auctioned as one group, with A4 auctioned separately, etc. BRS Channels 1 and 2 also should be auctioned together as a group. As NIA/CTN (and others) observes, "licensees will *not* be indifferent to the channels they obtain in an auction."[34] Depending upon the technologies and/or services they intend to deploy, licensees using LBS/UBS spectrum may not have any need for MBS spectrum, as these spectrum segments serve entirely different purposes and, for that reason, may not be valued equivalently from a bidding perspective.

C. The Commission Should Not Apply Designated Entity Provisions Or Restrictions On Commercial Funding To EBS Auction Applicants.

Sprint also agrees with NIA/CTN that "traditional auction concepts supporting the bids of so-called designated entities have no proper application in [the EBS auction] context."[35] The Commission's designated entity rules have always been directed at providing competitive bidding advantages to small businesses and rural telephone companies. As NIA/CTN observes, however, EBS-eligible institutions do not appear to fall into either category.[36] Further, these rules have, over the years, proven to be both complicated and controversial when applied in the commercial context. Given their unclear application in the non-profit, educational context, it seems likely that further

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[33] *See* Comments of WCA at 25-26; Comments of NIA/CTN at 12-14; Comments of Nextel at 9-10; Comments of BellSouth at 15-16; Comments of the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. ("IMWED") at 9.

[34] Comments of NIA/CTN at 13 (emphasis in original). *See also* Comments of BellSouth at 15.

[35] Comments of NIA/CTN at 15.

[36] For example, determining the gross revenues or affiliation relationships of a non-profit educational institution seems likely to raise considerable confusion and even more likely to result in substantial delays in processing the various auction application forms.

complications and confusion could result if they were applied to the EBS auction. In any event, given that the Commission has elected to retain EBS eligibility restrictions, it is not clear why EBS entities would require the Commission's designated entity rules to effectively participate in the EBS auction.

Sprint opposes ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc.'s ("IMWED") proposal to require educational entities bidding on EBS spectrum to use their own funds.[37] Prohibiting an educational entity – or any other entity, for that matter – from acquiring the capital it would need to obtain licenses that it will own and control is contrary to both FCC auction precedent and BRS/EBS precedent. Moreover, it is difficult to reconcile this proposal with IMWED's other contention that the bulk of EBS licenses are held by "large institutions with considerable economic resources"[38] – that is, if this latter contention is true, then presumably smaller educational institutions would want the flexibility to acquire capital from commercial sources. IMWED's proposal would favor national EBS licensees that, through their significant lease incomes, have accumulated substantial auction war chests that will allow them to bid with current funds, as compared to local educational institutions that have generally reinvested in educational activities and may lack enough available funds to meaningfully participate in the auction. Ultimately, the educational institutions themselves decide which licenses they wish to pursue and they should be allowed to choose whatever source of funding best meets their educational goals, whether that be their own funds, borrowed funds from capital markets, or capital guaranteed by future lease income.

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[37] Comments of IMWED at 11.

[38] *Id*. at 12.

IV. SELF-TRANSITION ISSUES

In its comments, Sprint proposed that any BRS or EBS licensee in a market for which no Initiation Plan has been filed by the applicable deadline should be provided the option of self-transitioning after such deadline.[39] There seems to be broad support for a self-transition option.[40] Sprint further proposed that licensees intending to elect the self-transition option should be required to provide notification to the Commission of such intention within sixty days of the applicable Initiation Plan filing deadline. Sprint did not specify a time-frame for completing self-transitions in its comments, and now proposes that parties electing to self-transition should be required to complete the self-transition process within eight months of the applicable Initiation Plan filing deadline. This should provide sufficient opportunity for self-transitions to occur. Licensees facing exceptionally difficult transitions (such as the statewide EBS networks that have large numbers of stations to transition) should be permitted to extend the eight-month deadline, as appropriate, through the waiver process.

V. THE WIRELESS CABLE EXCEPTION TO EBS ELIGIBILITY RESTRICTIONS SHOULD BE PHASED OUT

Sprint agrees with WCA that the so-called "wireless cable exception" rule[41] has become arcane and could be deleted, but that the Commission should nonetheless "preserve[] the rights of commercial entities who either have already licensed EBS

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[39] Comments of Sprint at 4-5.

[40] Comments of NIA/CTN at 16-18; Comments of WCA at 17-19; Comments of Nextel at 5-7; Comments of HITN at 6-9; Comments of IMWED at 4-6; Comments of WDBS at 3; Comments of DBC at 4; Comments of C&W at 3; Comments of Cheboygan-Otsego-Presque Isle Educational Service District and PACE Telecommunications Consortium at 3; Comments of SpeedNet, L.L.C. at 3.

[41] Now codified at 47 C.F.R. § 27.1201(c).

channels or have applications pending for EBS channels prior to the adoption of new rules in response to the *FNPRM*" and that commercial EBS stations so grandfathered should be reclassified as BRS stations.[42] Other commenters also appear to favor such an approach.[43] Sprint also agrees, however, that BRS BTA auction winners obtained an exclusive right to apply for vacant EBS spectrum under the rule.[44] To resolve this incompatibility, Sprint supports allowing BRS BTA authorization holders a "last chance" opportunity to apply for vacant EBS spectrum pursuant to the wireless cable exception prior to the EBS white space auction. Such approach would prejudice neither BRS BTA authorization holders nor EBS white space auction participants.

V. CONCLUSION

Sprint urges the Commission to follow the recommendations set forth concerning the adoption of a substantial service standard for BRS/EBS spectrum, auctioning of BRS and EBS spectrum, self-transitions, and the wireless cable exception to EBS eligibility.

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[42] Comments of WCA at 30 (*emphasis removed*).

[43] *See*, *e.g.*, Comments of NIA/CTN at 18-19.

[44] *See* Comments of Clearwire at 21-23.